

House File 588 - Introduced

HOUSE FILE 588
BY COMMITTEE ON STATE
GOVERNMENT

(SUCCESSOR TO HSB 75)

A BILL FOR

1 An Act relating to special assessments imposed by cities and
2 counties and including applicability provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 331.488, subsection 3, Code 2013, is
2 amended to read as follows:

3 3. The method of specially assessing and determining
4 benefits and determining individual benefits, area benefits,
5 and community benefits.

6 Sec. 2. Section 384.37, Code 2013, is amended by adding the
7 following new subsections:

8 NEW SUBSECTION. 2A. "*Area benefit*" means the benefit
9 derived from all or a part of a public improvement that is
10 designated to principally serve a district and be accessible
11 for use by all lots within the district.

12 NEW SUBSECTION. 2B. "*Community benefit*" means that portion
13 of the total benefit derived from a public improvement designed
14 to be used by or serve the general public and community that
15 is in excess of the area benefit or the sum of all individual
16 benefits, if any, including but not limited to those public
17 improvements or parts of a public improvement specified in
18 section 384.61, subsection 4.

19 NEW SUBSECTION. 8A. "*Individual benefit*" means that
20 amount of the total benefit of a public improvement that is
21 proportionate to the lot's use of the public improvement or
22 the amount of a benefit conferred upon the individual lot by a
23 public improvement that is intended to benefit, serve, or be
24 used only by the lot, including but not limited to those items
25 specified in section 384.61, subsection 3.

26 Sec. 3. Section 384.37, subsections 4 and 25, Code 2013, are
27 amended to read as follows:

28 4. "*District*" means the lots or parts of lots within
29 boundaries of a benefited area established by the council
30 for the purpose of the assessment of all or part of the cost
31 of a public improvement that is intended in whole or in part
32 to principally serve the benefited area and to provide an
33 individual benefit to and be accessible for use by such lots
34 or parts of lots.

35 25. "*Street improvement*" means the construction or repair of

1 a street by grading, paving, curbing, guttering, and surfacing
2 with oil, oil and gravel, or chloride, and street lighting
3 fixtures, connections and facilities, storm water management
4 intakes, sewers, and facilities, and traffic-control devices,
5 fixtures, connections, and facilities.

6 Sec. 4. NEW SECTION. 384.37A **Exceptions — applicability.**

7 1. This division applies to cities with a population in
8 excess of three thousand.

9 2. A city having a population of three thousand or less
10 may assess to private property within the city the cost of
11 construction and repair of public improvements within the
12 city, and main sewers, sewage pumping stations, disposal
13 and treatment plants, waterworks, water mains, extensions,
14 and drainage conduits extending outside the city. However,
15 the imposition of such a special assessment by a city with
16 a population of three thousand or less is subject to the
17 requirements and procedures of chapter 384, division IV, Code
18 2013.

19 Sec. 5. Section 384.38, subsection 1, Code 2013, is amended
20 to read as follows:

21 1. A city may, subject to the limitations of this division,
22 assess to private property within the city the cost of
23 construction and repair of public improvements within the
24 city, and main sewers, sewage pumping stations, disposal and
25 treatment plants, waterworks, water mains, extensions, and
26 drainage conduits extending outside the city. However, such
27 an assessment to private property, as allocated to each lot,
28 shall not exceed that portion of the total assessment that is
29 proportionate to the individual benefit to the lot as compared
30 to the total benefit of the public improvement.

31 Sec. 6. Section 384.42, Code 2013, is amended by adding the
32 following new subsection:

33 NEW SUBSECTION. 01. Prior to initiating procedures to
34 determine the amount of benefit that will be conferred upon
35 private property as the result of a public improvement for

1 which a special assessment will be imposed and prior to the
2 adoption of a preliminary resolution under subsection 2, adopt
3 a master ordinance after a public hearing the notice of which
4 is published thirty days prior to the hearing in accordance
5 with section 362.3, setting forth, in accordance with this
6 division, the methodology and procedure to be used by the city
7 for all future special assessments in determining the amount
8 of individual benefit, area benefit, and community benefit
9 that will result from a public improvement and a description
10 of the manner in which the cost of a public improvement will be
11 allocated to each category of benefit.

12 Sec. 7. Section 384.42, subsections 1, 2, and 3, Code 2013,
13 are amended to read as follows:

14 1. Arrange for engineering services to prepare the plats,
15 schedules, estimates of cost, plans, and specifications and
16 to supervise construction of the proposed improvement, and if
17 necessary, arrange for planning studies or engineering studies
18 to determine the amount of benefit that will be conferred upon
19 private property as the result of the public improvement.

20 2. Adopt a preliminary resolution by the vote of a majority
21 of all the members of the council, after a public hearing the
22 notice of which is published thirty days prior to the hearing
23 in accordance with section 362.3. The notice shall also be
24 sent by certified mail no later than thirty days prior to
25 the public hearing to each owner of a lot which the council
26 believes will be individually benefited by the improvement.
27 The preliminary resolution shall contain the following:

28 a. A description of the types or alternate types of
29 improvement proposed.

30 b. The beginning and terminal points or general location of
31 the proposed improvement.

32 c. An order to the engineer to prepare preliminary plans and
33 specifications, estimated total cost of the work, and a plat
34 and schedule, and to file them with the clerk.

35 d. A general description of the property or a designation

1 of the lots which the council believes will be ~~specially~~
2 individually benefited by the improvement.

3 e. A detailed description of the method used for determining
4 benefits in accordance with the ordinance adopted under
5 subsection 01, an estimate of the proportion of area benefit
6 and community benefit that will be conferred as a result of the
7 public improvement, a statement of the proportion of the total
8 cost of the public improvement that the council proposes to
9 assess against all individually benefited property within the
10 proposed district, and a statement of the method by which that
11 portion of the total cost of the public improvement proposed
12 to be assessed against individually benefited property in the
13 proposed district will be allocated to each lot as the result
14 of individual benefits conferred on the lots.

15 3. The preliminary resolution may also contain the
16 following:

17 ~~a. A statement of the proportion of the total cost which~~
18 ~~the council proposes to assess against specially benefited~~
19 ~~property.~~

20 ~~b. A~~ a short and convenient designation for the public
21 improvement by which it may be referred to in all subsequent
22 proceedings.

23 Sec. 8. Section 384.44, Code 2013, is amended to read as
24 follows:

25 **384.44 Estimated cost.**

26 The estimated total cost of any public improvement
27 constructed under this part must include all of the items
28 of cost listed in section 384.37, subsection 26, which the
29 council proposes to include as a part of the cost of the public
30 improvement, and may include an item to be known as the default
31 fund amounting to not more than ten percent of the portion of
32 the total cost of the improvement which the council proposes to
33 assess against ~~specially~~ individually benefited property.

34 Sec. 9. Section 384.47, subsections 3 through 5, Code 2013,
35 are amended to read as follows:

1 3. The total amount proposed to be assessed to each
2 lot according to the method described in the preliminary
3 resolution, including the assessment for the default fund, if
4 any.

5 4. The proportion of the estimated total cost of the public
6 improvement which is allocated to each lot as an individual
7 benefit.

8 5. The amount of deficiency, if any, between the amount
9 proposed to be assessed and the proportion of the estimated
10 total cost of the public improvement allocated to each lot
11 as an individual benefit. The amount of deficiency shall be
12 shown as a conditional deficiency assessment as authorized by
13 sections 384.60, 384.62 and 384.63.

14 Sec. 10. Section 384.51, unnumbered paragraph 2, Code 2013,
15 is amended to read as follows:

16 An amendment which extends the boundaries of a district,
17 increases the amount to be assessed against a lot, or adds
18 additional public improvements, is not effective until an
19 amended ordinance, if necessary, plat, schedule, and estimate
20 have been prepared and adopted, a notice published and
21 mailed to all affected property owners, and hearing held in
22 the same manner as the original proceedings, or until all
23 affected property owners agree in writing to the change.
24 The adoption of a resolution of necessity is a legislative
25 determination that the improvement is expedient and proper and
26 that property assessed will be specially individually benefited
27 by the improvement and this determination of the council
28 is conclusive. Ownership of property to be assessed by an
29 improvement does not, except for fraud or bad faith, disqualify
30 a council member from voting on any measure.

31 Sec. 11. Section 384.54, subsection 15, Code 2013, is
32 amended to read as follows:

33 15. ~~a. The cost of all court proceedings are a legitimate~~
34 ~~item of expense in connection with a public improvement,~~
35 ~~and may be included within the final assessment against any~~

1 ~~property specially benefited in the assessment district.~~

2 ~~b.~~ Whenever on a hearing by the court, the amount of any
3 assessment is reduced or canceled so that there is a deficiency
4 in the total amount remaining assessed in the proceeding, the
5 court may assess the deficiency to the city or distribute the
6 deficiency upon the other ~~property abutting upon or adjacent to~~
7 ~~the improvement or~~ lots benefiting from the improvement in the
8 district assessed, in a manner ~~the court finds to be just and~~
9 equitable consistent with this chapter, not exceeding, however,
10 the amount the ~~property lot~~ would be ~~specially individually~~
11 benefited by the improvement, and not exceeding twenty-five
12 percent of the value of the lot as shown by the plat and
13 schedule of assessments or as reduced by the court.

14 Sec. 12. Section 384.61, Code 2013, is amended to read as
15 follows:

16 **384.61 Assessment of benefits.**

17 1. The total cost of a public improvement, except for
18 paving that portion of a street lying between railroad
19 tracks and one foot outside of the tracks, or which is to
20 be otherwise paid, ~~must~~ may be assessed against all lots
21 within the assessment district in accordance with the ~~special~~
22 individual benefits conferred upon the property, and not in
23 excess of such benefits. That portion of the total cost of
24 a public improvement that is not assessed to individual lots
25 in the district as the result of individual benefits shall be
26 attributable to the community benefit and shall be paid by the
27 city.

28 2. A lot that is subject to a special assessment may be
29 divided into two or more lots for assessment purposes upon the
30 request or consent of the property owner in order to separate
31 existing building sites from those portions of the lot that are
32 used for agricultural purposes or vacant land to be reserved
33 for development purposes. If an owner of property subject to
34 special assessment divides the property into two or more lots,
35 and if the plan of division is approved by the council, the

1 owner may discharge the lien upon any of the lots by payment of
2 the amount unpaid, calculated as determined by the council.

3 3. All of the following public improvements are presumed to
4 confer an individual benefit on a lot within a district:

5 a. A public improvement that benefits, serves, or that
6 is intended for use by only one lot, unless such public
7 improvement is replacing an existing public improvement of
8 acceptable or working quality and is required as a result of
9 work on or repair of another public improvement that does not
10 benefit, serve, or that is not intended for use by only that
11 lot.

12 b. A sidewalk upon a lot that is single-family residential
13 property located along the frontage of the lot not to exceed
14 four feet in width at a standard thickness.

15 c. A sidewalk upon a lot that is commercial property,
16 industrial property, multifamily residential property, or
17 property owned by a business entity as defined in section
18 501A.102, located along the street frontage of the lot not to
19 exceed six feet in width at a standard thickness.

20 d. Underground gas, water, heating, sanitary sewer, storm
21 sewer, and electrical connections and accessories located in a
22 public street right-of-way and that serve only the lot.

23 e. The portion of an area benefit which is proportionate
24 to a lot's forecasted use of the public improvement as a share
25 of the forecasted use of the public improvement by all lots in
26 the district.

27 4. All of the following public improvements are presumed to
28 confer a community benefit:

29 a. A public improvement or part of a public improvement that
30 is designed, constructed, or intended, due to additional size,
31 standards, facilities, or structures, for use by or to serve
32 property outside the district or the general public.

33 b. A sidewalk or recreational trail, or part thereof, that
34 is part of a community-wide public recreational trail system.

35 c. The portion of a sidewalk that exceeds the portion of

1 the sidewalk that provides an area benefit or presumed to be an
2 individual benefit under subsection 3, paragraph "b" or "c".

3 d. Notwithstanding any provision of this division to the
4 contrary, the planning, legal, administrative, engineering, and
5 inspection costs for that portion of the public improvement
6 that is a community benefit and all city employee salary costs
7 associated with the public improvement.

8 5. a. Notwithstanding any other provision in this
9 division to the contrary, each city undertaking the repair
10 or construction of a public improvement that includes a
11 street improvement paid for in whole or in part by a special
12 assessment shall, prior to the preparation of the schedule
13 under section 384.47, complete a vehicle traffic analysis and
14 forecast for the location of the proposed street improvement
15 that includes but is not limited to the following:

16 (1) A determination of the amount of vehicle traffic
17 forecasted to be generated from each lot or part of a lot
18 within the district for use in determining both the individual
19 benefits and area benefits.

20 (2) A determination of both the vehicle traffic forecasted
21 to be generated by existing sources outside of the district
22 after completion of the street improvement and the vehicle
23 traffic forecasted to be generated from land development
24 projects and uses outside of the district that are or will
25 be developed concurrently, in conjunction with, or following
26 completion of the street improvement for use in determining the
27 community benefit.

28 b. Those portions of the vehicle traffic analysis and
29 forecast relating to the amount of vehicle traffic generated
30 by each lot or part of a lot in the district after completion
31 of the street improvement shall be based on the estimated
32 development of such lots or parts of lots within ten years
33 after completion of the street improvement. The estimate of
34 the extent of development shall be made in accordance with
35 development estimates and trends of similar property in the

1 local area, the zoning and use restrictions imposed on or
2 proposed for the property, and the availability of necessary
3 infrastructure to develop the property. In addition to actual
4 vehicle traffic data available to the city, the vehicle traffic
5 analysis and forecast shall be completed using the most current
6 trip generation data from the institute of transportation
7 engineers for planned land uses or another generally recognized
8 organization.

9 c. The individual benefit accruing to each lot within
10 the district as the result of the street improvement shall
11 not exceed the percentage of the area benefit from the
12 street improvement that is proportionate to the lot's
13 forecasted amount of traffic generated as it bears to the
14 total forecasted amount of vehicle traffic generated in the
15 district. Additionally, in no case shall a lot or a part of a
16 lot be assessed for the improvements to a major road, including
17 but not limited to a road classified as an arterial road,
18 classified as a major collector road, or a road previously
19 under the jurisdiction of a county, if such lot or part of a lot
20 was previously assessed for improvements to another such major
21 road.

22 Sec. 13. Section 384.63, subsection 2, Code 2013, is amended
23 to read as follows:

24 2. The council shall, by resolution, provide that the
25 deficiencies for the lots ~~specially~~ individually benefited by a
26 public improvement shall be certified to the county treasurer,
27 who shall record them in the county system as "special
28 assessment deficiencies", and to the appropriate city official
29 charged with the responsibility of issuing building permits,
30 who shall notify the council when a private improvement is
31 subsequently constructed on any lot subject to a deficiency.
32 Certification to the county treasurer shall include a legal
33 description of each lot. The period of amortization for a
34 public improvement for which there are deficiencies shall
35 commence with the adoption of the resolution of necessity

1 benefit to the lot as compared to the total benefit of the
2 public improvement.

3 The bill requires that before a city initiates procedures
4 to determine the amount of benefit that will be conferred
5 upon private property as the result of a public improvement
6 for which a special assessment will be imposed and prior to
7 the adoption of a preliminary resolution related to a public
8 improvement, a city must adopt a master ordinance, after
9 specified notices and a hearing, setting forth the methodology
10 and procedure to be used by the city for all future special
11 assessments in determining the amount of individual benefit,
12 area benefit, and community benefit that will result from a
13 public improvement and a description of the manner in which the
14 cost of a public improvement will be allocated to each category
15 of benefit.

16 The bill requires that 30 days' notice of a preliminary
17 resolution be published prior to adoption of the preliminary
18 resolution related to a public improvement. The bill also
19 requires such notice to be sent to the owner of each lot which
20 the city council believes will be individually benefited by the
21 improvement. The bill specifies additional information that
22 must be included in the preliminary resolution.

23 The bill strikes the provision of Code section 384.54 that
24 designated the cost of all court proceedings to be a legitimate
25 item of expense in connection with a public improvement and
26 allowed such costs to be included within the final assessment
27 against any property specially benefited in the assessment
28 district.

29 The bill specifies that the total cost of a public
30 improvement, except for certain paving near railroad tracks
31 or improvements to be otherwise paid, may be assessed against
32 all lots within the assessment district in accordance with the
33 individual benefits conferred upon the property, and not in
34 excess of such benefits. The bill provides that the portion
35 of the total cost of a public improvement that is not assessed

1 to individual lots as the result of individual benefits is
2 attributable to the community benefit and shall be paid by the
3 city.

4 The bill allows a lot that is subject to a special assessment
5 to be divided into two or more lots for assessment purposes
6 upon the request or consent of the property owner in order to
7 separate existing building sites from those portions of the lot
8 that are used for agricultural purposes or vacant land to be
9 reserved for development purposes.

10 The bill designates certain public improvements that are
11 presumed to confer an individual benefit and designates certain
12 public improvements that are presumed to confer a community
13 benefit. Under the bill, the planning, legal, administrative,
14 engineering, and inspection costs for that portion of the
15 public improvement that is a community benefit and all city
16 employee salary costs associated with the public improvement
17 are presumed to confer a community benefit.

18 The bill requires each city undertaking the repair or
19 construction of a public improvement that includes a street
20 improvement, as defined in the bill, and paid for in whole or
21 in part by a special assessment, to complete a vehicle traffic
22 analysis and forecast for the location of the proposed street
23 improvement in order to determine the individual benefits and
24 the area benefit and the community benefit.

25 The bill provides that those portions of the vehicle traffic
26 analysis and forecast relating to the amount of vehicle traffic
27 generated by each lot or part of a lot in the district after
28 completion of the street improvement shall be based on the
29 estimated development of such lots or parts of lots within 10
30 years after completion of the street improvement. The estimate
31 of the extent of development shall be made in accordance with
32 development estimates and trends of similar property in the
33 local area, the zoning and use restrictions imposed on or
34 proposed for the property, and the availability of necessary
35 infrastructure to develop the property.

1 In addition to actual vehicle traffic data available
2 to the city, the bill requires that the vehicle traffic
3 analysis and forecast must be completed using the most current
4 trip generation data from the institute of transportation
5 engineers for planned land uses or another generally recognized
6 organization.

7 The bill specifies that the individual benefit accruing
8 to each lot within the district as the result of the street
9 improvement shall not exceed the percentage of the area benefit
10 from the street improvement that is proportionate to the lot's
11 forecasted amount of traffic generated as it bears to the total
12 forecasted amount of vehicle traffic generated in the district.

13 The bill also specifies that in no case shall a lot or a
14 part of a lot be assessed for the improvements to a major road,
15 including but not limited to a road classified as an arterial
16 road or a major collector road, or a road previously under the
17 jurisdiction of a county, if such lot or part of a lot was
18 previously assessed for improvements to another such major
19 road.

20 By operation of law, the bill modifies similar provisions
21 relating to the authority of a county to assess to property the
22 costs of a public improvement under Code chapter 331 and the
23 authority of a sanitary district under Code chapter 358.

24 This Act applies to public improvements undertaken on or
25 after July 1, 2013.